

From: Matt Dunagan
Sent: Friday, April 28, 2017 5:17 PM
To: !Sheriffs <sheriffs@flsheriffs.org>
Cc: !Chief Deputies <chiefdeputies@flsheriffs.org>; !Sheriffs Assistants <Assistants@flsheriffs.org>; !Legislative Committee <legislativecommittee@flsheriffs.org>
Subject: RE: ICE Detainers

Sheriffs,

Thank you for responding to yesterday's email. Here is our updated list. FSA will continue to keep you updated as this proposal moves forward. Have a good weekend.

Sheriffs Supporting Cooperative Agreements (April 28, 2017)

1. Alachua
2. Baker
3. Bay
4. Brevard
5. Calhoun
6. Charlotte
7. Clay
8. Collier
9. Columbia
10. DeSoto
11. Dixie
12. Duval
13. Flagler
14. Gilchrist
15. Glades
16. Gulf*
17. Hardee
18. Hendry
19. Hernando
20. Highlands
21. Holmes
22. Indian River
23. Jackson*
24. Lake
25. Lee
26. Leon
27. Levy
28. Liberty
29. Madison
30. Manatee

31. Marion
32. Martin
33. Monroe
34. Nassau
35. Okeechobee
36. Orange*
37. Pasco
38. Pinellas
39. Polk
40. Putnam
41. Santa Rosa
42. Sarasota
43. Seminole
44. St. Johns
45. St. Lucie
46. Sumter
47. Suwannee
48. Taylor
49. Union
50. Wakulla
51. Walton
52. Washington

County Operated Jails*

1. Citrus (private, Core Civic)
2. Escambia
3. Gulf
4. Jackson
5. Miami-Dade
6. Okaloosa
7. Orange
8. Osceola
9. Volusia

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From: Matt Dunagan
Sent: Thursday, April 27, 2017 9:49 AM
To: !Sheriffs <sheriffs@flsheriffs.org>
Cc: !Chief Deputies <chiefdeputies@flsheriffs.org>; !Sheriffs Assistants <Assistants@flsheriffs.org>; !Legislative Committee <legislativecommittee@flsheriffs.org>
Subject: RE: ICE Detainers

Sheriffs,

Thank you for participating in yesterday's conference call. Listed below are the current sheriffs who agreed to the ICE detainer proposal that was discussed on the call and is detailed in this email.

Please call or email me by noon tomorrow (Friday April 28) if you would like to be added to this list or if I made a mistake and incorrectly added you to this list. I included an asterisk if the sheriff agreed to the proposal, but they do not operate the jail. Thank you.

List as of 4/27 @ 9AM

Baker

Bay

Calhoun

Charlotte

Collier

Columbia

DeSoto

Dixie

Flagler

Gilchrist

Glades

Gulf*

Hardee
Hernando
Indian River
Jackson*
Lake
Leon
Manatee
Marion
Monroe
Nassau
Okeechobee
Pasco
Pinellas
Polk
Sarasota
Seminole
St. Johns
St. Lucie
Sumter
Wakulla
Walton
Washington

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From: Matt Dunagan
Sent: Tuesday, April 25, 2017 2:59 PM
To: !Sheriffs <sheriffs@flsheriffs.org>
Cc: !Chief Deputies <chiefdeputies@flsheriffs.org>; !Sheriffs Assistants <Assistants@flsheriffs.org>; !Legislative Committee <legislativecommittee@flsheriffs.org>
Subject: RE: ICE Detainers

Sheriffs,

A quick reminder, FSA will be hosting a conference on ICE detainees tomorrow at 5:00 p.m. (est). FSA will take a quick roll call at the beginning of the meeting. Please take a few minutes to review the information that was outlined in this email before tomorrow's call. Thank you.

Conference Call: Wednesday April 26th @ 5:00PM (est) / 4:00PM (cst)

Call-in number: 1-800-920-7487

Participant code: 335-14-151#

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From: Matt Dunagan
Sent: Friday, April 21, 2017 12:39 PM
To: !Sheriffs <sheriffs@flsheriffs.org>
Cc: !Chief Deputies <chiefdeputies@flsheriffs.org>; !Sheriffs Assistants <Assistants@flsheriffs.org>; !Legislative Committee <legislativecommittee@flsheriffs.org>
Subject: ICE Detainers

Sheriffs,

Please review the following email from FSA's Legislative Chair, Sheriff Bob Gualtieri. I will send out another email with a calendar invite for next Wednesday's conference call for all sheriffs.

Conference Call: Wednesday April 26th @ 5:00PM (est) / 4:00PM (cst)

Call-in number: 1-800-920-7487

Participant code: 335-14-151#

FSA will hold a conference call with all sheriffs next **Wednesday April 26, 2017 at 5:00 p.m.** to discuss the following. It is imperative that all sheriffs who operate jails personally participate in the call. We ask that you review the following before the call so that we may have a brief and informed discussion and answer any questions.

As we are all aware there is an ongoing issue with ICE detainers and there is a standoff between DHS/ICE and sheriffs who operate jails over the legality of these detainers. ICE continues to state that the detainers are lawful and should be honored by sheriffs, but most sheriffs are not honoring the detainers because at least 9 federal courts across the country have held sheriffs have no lawful basis to honor the detainers and face civil liability if they do so. Although temporarily suspended, DHS had been issuing weekly reports "exposing" sheriffs and jail operators that allegedly fail to honor these detainers, despite our inability to lawfully do so. President Demings and other sheriffs recently held a press conference to address this issue.

Many, if not most sheriffs want to cooperate with ICE. The problems associated with ICE detainers require a solution where each sheriff can legally, and without incurring liability, assist ICE by detaining illegal aliens at their jail beyond resolution of the inmate's state charges. At the end of this email I have summarized the issues that have resulted in liability; however, the purpose of this email is not to discuss those problems, but to provide a solution where we can work cooperatively with ICE regarding illegal aliens in our jails without exposing ourselves to liability.

The solution is to enter into a cooperative agreement that allows ICE to temporarily detain individuals in our jails. The current situation is that ICE asks the sheriff to hold the person under the sheriff's authority, for which none exists, upon conclusion of the inmate's state charges. Instead, under the cooperative agreement solution, once the state detention ends THEY (ICE) hold the inmates under their authority in our jails. This simply requires an agreement between the sheriff and the Attorney General and ICE then tendering a booking form (I-203) to the jail.

Attorney General enters cooperative agreements with local jails:

Federal law allows the Attorney General to enter into a cooperative agreement with any local jail to establish acceptable conditions of confinement and detention services. 8 U.S.C.A. § 1103(11) (A). This agreement does not automatically come with compensation but remember we were not being compensated when we previously honored the detainers, and the requested period of detention is only up to 48 hours. Under this plan each agency could enter into its own cooperative agreement with the Attorney General that would allow the inmate, at the conclusion of his/her state incarceration, to transfer directly to ICE custody in each local facility—the inmate is legally in ICE custody upon termination of state custody and receipt of the I-203 and you are merely holding the inmate for ICE.

Another solution to the current situation is having 287(g) deputies in every jail. ICE has proposed this as 287(g) designates state officers to perform immigration enforcement functions—which means the cross-designated state officer can execute the immigration warrants. To become cross-certified under this program, each state officer is required to attend an initial 4-week training program and a 1-week refresher every 2 years. Granted, this program does address the legal issues; however, since it requires training and cross-certification by individual officers, it is not an efficient fix. Moreover, there are likely some sheriffs who do not want any of their deputies, including detention deputies, to be 287(g) certified for a whole host of reasons. Instead of using an individual deputy under the (287(g) program, a cooperative agreement applies to the facility and eliminates the need for that training and other issues in their entirety.

In summary, the 287(g) attaches to the person; whereas a cooperative agreement attaches to the facility. Once the cooperative agreement is entered, ICE can hold those illegal aliens in your facility for up to the 48 hours under their authority simply by filing an I-203 "booking form." The significance of an I-203 is that once the state incarceration has ended, the inmate is then held under ICE authority—not your authority. If the inmate files a habeas petition (court process for release), that petition must be brought against ICE/DHS as neither the sheriff, the facility, nor any individual officer would be a proper party and the state court would not have jurisdiction. Further, any allegation that the inmate was improperly held would be against ICE as the sheriff is merely "holding" the inmate who is in ICE custody in their jail under the I-203 booking form.

As I began, this email is to propose an effective and efficient solution allowing all jails to assist ICE by housing those aliens they would like detained. This proposed solution resolves all of the issues set out below:

BRIEF SUMMARY OF ISSUES WITH DETAINERS:

The succinct issue surrounding ICE detainers (I-247) is that there is no authority for local law enforcement to detain based on any version of ICE's I-247 (detainer form). The reasons that there is no authority are more complicated, but at the core is that all I-247 forms are based on a civil deportation action. Remember, **ALL OF THIS IS CIVIL**, not criminal. ICE is not asking you to hold someone on criminal immigration charges, they are all civil charges. Since local law enforcement does not have any authority to arrest, serve or execute any civil deportation matters, local law enforcement simply cannot detain these individuals.

1. **REQUEST vs. MANDATORY.** All I-247 Immigration Detainers are requests. The I-247 form itself indicates that the form is not a mandatory hold. The form states that it is ICE's "notice of intent to assume custody..." Further the form states, "it is therefore **requested** that you..." ICE is not directing local law enforcement to hold, ICE is not transferring its authority to hold; instead ICE is merely asking local law enforcement to hold without providing any legal authority, including its own authority.
2. **PROBABLE CAUSE.** The I-247A states that "DHS has determined that probable cause exists..." However, the list that follows are **CIVIL** and not criminal violations of the immigration laws. Moreover, although the phrase "probable cause" is more commonly used in criminal law, that term was adopted under the civil deportation scheme. Since "probable cause that a **CRIME** has been committed" is required for you to detain an individual, you don't have this authority under any circumstances. ICE's determination of probable cause for its civil violation cannot provide the authority for local law enforcement to detain, ICE cannot give you its authority as there is no statutory provision (state or federal) allowing that.
3. **ATTACHING WARRANT.** According to the new I-247A, ICE will attach an I-200 (Warrant for Arrest of Alien) or I-205 (warrant of removal/deportation) to the detainer. Similar to problems with ICE's determination of probable cause, attaching a civil warrant does not solve the problem. Legally, these warrants can only be executed by certain Immigration officials. Local law enforcement is not authorized to serve these warrants. ICE claims this warrant solves the problem because you can hold on the warrant once you receive it and you serve it, you cannot serve it as there is no authority to do so.

This is an important and pressing issue that needs swift resolution. For some reason ICE continues to debate whether sheriffs have the authority to hold illegal aliens on their detainers despite 9 federal court ruling that we do not. I believe we should stop debating who is legally correct and focus on a solution that we know will work. The cooperative agreement and receiving the I-203 is a viable and realistic solution that can be accomplished quickly. Moreover, operationally it does not change much from what we have done in the past when we honored the detainers or deviate from what ICE is asking that we do now—hold the inmates for up to 48 hours beyond their release time on the state charges—the cooperative agreement and I-203 process just allow us to do it lawfully.

Florida sheriffs have the opportunity to lead in the solution to this problem. If all sheriffs who operate jails will agree to enter into the cooperative agreement we can present this to the Attorney General and DHS Secretary. By providing this solution with consensus to enter into the agreements we will demonstrate our focus on lawfully cooperating and ending this current “standoff.”

Sheriff Bob Gualtieri

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